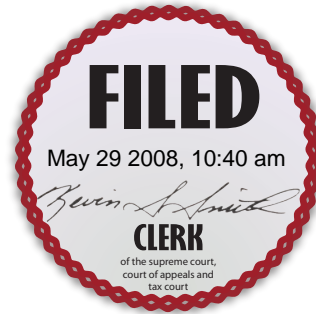


Pursuant to Ind.Appellate Rule 15(A)(3), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JERRY CRAIG,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0711-CR-618

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
Cause No. 49G05-0609-MR-167701

May 29, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Jerry Craig appeals from his conviction for Murder,¹ a felony. Specifically, Craig contends that the State failed to establish that he did not act in sudden heat, a factor which mitigates murder to voluntary manslaughter.² We affirm.

FACTS

At approximately 10:00 p.m. on September 5, 2006, Jerry Craig was walking to a store near the apartment he shared with Doris Evins. Craig heard someone call his name, and it turned out to be Evins. Craig and Evins continued to the store, where Craig purchased some cigarettes, and the duo began walking back, taking an alleyway. According to Craig, he and Evins began to argue, and, when Evins approached him from behind, he swung his elbow, striking her in the jaw. However the altercation began, the end result was that Craig struck Evins at least eleven times in the head or neck and at least five times in the torso or extremities, killing her. Evins suffered fractures to her nose, cheekbone, upper jaw, orbital bone, and a broken neck. After a jury convicted Craig of murder, the trial court sentenced him to sixty years of incarceration.

DISCUSSION AND DECISION

Craig contends that the State failed to negate the presence of sudden heat, which, if found by the jury, would have reduced his murder conviction to voluntary manslaughter.

Voluntary Manslaughter is a lesser included offense of Murder, distinguishable by the factor of the defendant having killed, “while acting under sudden heat.” Ind. Code § 35-42-1-3 (1993). To establish sudden

¹ Ind. Code § 35-42-1-1 (2006).

² Ind. Code § 35-42-1-3 (2006).

heat, the defendant must show “sufficient provocation to engender ... passion.” *Johnson v. State*, 518 N.E.2d 1073, 1077 (Ind. 1988). Sufficient provocation is demonstrated by “such emotions as anger, rage, sudden resentment, or terror [that are] sufficient to obscure the reason of an ordinary person, prevent deliberation and premeditation, and render the defendant incapable of cool reflection.” *Id.*

To obtain a conviction for Murder, the State is under no obligation to negate the presence of sudden heat because “[t]here is no implied element of the absence of sudden heat in the crime of murder.” *Palmer v. State*, 425 N.E.2d 640, 644 (Ind. 1981). However, once a defendant places sudden heat into issue, the State then bears the burden of negating the presence of sudden heat beyond a reasonable doubt. *McBroom v. State*, 530 N.E.2d 725, 728 (Ind. 1988). It may meet this burden by rebutting the defendant’s evidence or affirmatively showing in its case-in-chief that the defendant was not acting in sudden heat when the killing occurred. *Gregory v. State*, 540 N.E.2d 585, 593 (Ind. 1989).

Earl v. State, 715 N.E.2d 1265, 1267 (Ind. 1999).

Here, the only evidence that might tend to establish that Craig acted in sudden heat in killing Evins was his statement to the police, in which he claimed that they were arguing. However, even assuming, *arguendo*, that Craig’s statement could establish the presence of sudden heat, the jury was under no obligation to credit it. “Existence of sudden heat is a classic question of fact to be determined by the jury.” *Jackson v. State*, 709 N.E.2d 326, 329 (Ind. 1999) (citation omitted). Craig’s argument is essentially an invitation to reweigh the evidence, which we will not do. The State produced sufficient evidence to establish that Craig was not acting in sudden heat when he killed Evins.

The judgment of the trial court is affirmed.

BARNES, J., and CRONE, J., concur.